



**University of California
Ernest Orlando Lawrence
Berkeley National Laboratory**

GENERAL PROVISIONS FOR ARCHITECT-ENGINEER SERVICES

DEFINITIONS

As used herein, the following terms shall have the indicated meanings:

- "Government" means the United States Government;
- "DOE" means the U. S. Department of Energy;
- "University" means The Regents of the University of California, acting through the LBNL;
- "LBNL" means the Ernest Orlando Lawrence Berkeley National Laboratory;
- "Patent Counsel" means the DOE Patent Counsel.
- "Subcontract" means this Subcontract with the University;
- The term "Subcontractor" means the party who has entered into this Subcontract with the University;
- The term "subcontractor" means the Subcontractor's subcontractor(s).

REIMBURSABLE COSTS & EXPENSES (A-E)

Types of Reimbursables:

The Subcontractor shall be reimbursed for certain costs and expenses associated with the architect-engineer work for which it has not otherwise been compensated, and which have been incurred with the prior written approval of the University. Such reimbursable costs and expenses shall not exceed a total of the aggregate for reimbursable costs, as set forth in the Subcontract. The following are the descriptive categories of work which may be considered for reimbursable costs:

1. *Topographical and Other Field Survey Costs.* Actual costs of labor, materials and equipment use; traveling expenses directly associated therewith; transportation of items and material as may be required and approved; subcontracts as approved; preparation of maps; test borings if required by University; and any subsurface investigations if required and approved by University.
2. *Labor/Material and Equipment Costs - Travel Costs for Resident and Field Engineer - Inspector Expenses.* The actual costs of labor, materials and equipment use; traveling expenses for resident engineer in charge, field engineer(s) and inspectors (if required), and part-time inspectors from the home office or branch office of the Subcontractor. Costs of the supporting field office force as required at construction project site for inspection of construction.
3. *Expediting Costs/Expenses.* Actual costs associated with labor and materials and traveling expenses for expediting or inspecting material and equipment; checking or expediting shop drawings at vendors' plants, etc.
4. *Transportation Costs - On-Site Operations.* Actual costs of on-site transportation for any of those services listed in (1) through (3), above, if required by the Subcontractor.
5. *Expenses of Outside Technical Assistance.* Actual compensation paid by the Subcontractor for outside expert technical assistance, including the services of materials testing laboratories, for performance of work or tasks required of the Subcontractor under this Subcontract.
6. *Extra Copies of Drawings, Specifications, Etc.* Actual costs of labor, materials and equipment use, or an allowance in lieu of such actual costs, at a rate or rates approved in advance by University, for

any extra copies of prints of drawings, specifications, invitations for bid, or other related documents, or revisions to any such documents, which are reproduced after University approval of such material furnished by the Subcontractor for Title II Design Services. Such material may be required and specifically requested by University on occasion. (NOTE: This specific reimbursable cost category does not include "as-built" record drawings and specifications as may be required for Title III Construction Services

7. *Special Documents.* Actual costs of labor, materials, and equipment use for copies of special documents that have been prepared with University approval.

8. *Expenses of Subcontractor's Supervising Representative.* Actual expenses of travel of the Subcontractor's supervising representative in direct performance of this Subcontract in addition to the normal supervision furnished or otherwise delineated in the Subcontract.

9. *Travel.* This Subcontract may include estimated funds for various domestic round trips deemed necessary by the LBNL Technical Coordinator. Only actual travel costs will be paid in accordance with the Federal Travel Regulations and Berkeley Laboratory Travel policies, attached as needed. Any Foreign Travel (any travel outside of the United States and its territories and possessions) will require prior written approval by LBNL and DOE.

Payment for Reimbursables:

1. Payments for costs/expenses which are reimbursable under the provisions of this Subcontract shall be made to the Subcontractor at intervals as agreed to by the University and the Subcontractor .
2. Payments to the Subcontractor shall be made only after the specific costs/expenses have been incurred by Subcontractor, and invoicing has been substantiated by copies of paid (by Subcontractor) invoices or other substantiating documentation that such costs/expenses have been, in fact, incurred by the Subcontractor.
3. It is the responsibility of the Subcontractor to notify the University in writing when at least eighty percent (80%) of the total "reimbursable costs/expenses" as set forth in the Schedule have been expended. This written notification shall be furnished to the University's procurement and technical representatives.

CONSTRUCTION BUDGET

LBNL shall establish the construction budget for each project authorized under the Subcontract. The Subcontractor has the responsibility to prepare preliminary and final designs, along with their associated cost estimates, within LBNL's construction budget. Whenever a preliminary or final cost estimate varies by ten (10) percent or more from the established construction budget, the Subcontractor shall, at LBNL's option, and at no additional cost to LBNL, revise the preliminary and/or final designs for LBNL's approval, in order to bring the estimated cost of construction within ten (10) percent of the established construction budget.

In the event that construction bids exceed the established construction budget by more than ten (10) percent, LBNL may require the Subcontractor to redesign the project, at no additional cost to LBNL, so that LBNL can re-solicit new construction bids until they are within ten (10) percent of the construction budget.

RELEASE OF INFORMATION

Information regarding this Subcontract or the undertaking or any data developed hereunder shall not be released, and the name of the University, LBNL, or the Government shall not be used, in any publications, news releases, advertising, speeches, technical papers, photographs and other releases of information, without prior written approval from the LBNL Procurement Representative.

NOTICES - INABILITY TO PERFORM; LITIGATION AND CLAIMS

The Subcontractor shall immediately notify the University in writing of (1) any action, including any proceeding before an administrative agency, filed against the Subcontractor arising out of the performance of this Subcontract, and (2) any claim against the Subcontractor, the cost and expense of which is allowable under the terms of this Subcontract.

If, at any time during the performance of this Subcontract, the Subcontractor becomes aware of any circumstances whatsoever which may jeopardize its fulfillment of the agreed performance of all or any portion of the Subcontract, it shall immediately notify the University's Administrative Representative in writing of such circumstances, and the Subcontractor shall take whatever action is necessary to cure such defect within the shortest possible time.

DISPUTES (A-E)

All claims, disputes and other matters in question between the parties to this Subcontract, arising out of or related to this Subcontract or the breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise, except as otherwise provided in this Subcontract or unless such claims, disputes and other matters in question between the parties arise from statute or regulation under which a State or Federal agency is specifically authorized to settle or determine.

Notice of the demand for arbitration shall be filed in writing with the other party to this Subcontract and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall a demand for arbitration be made after the date when the institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with California law in any court having jurisdiction thereof.

If any claim, dispute, or other matter in question between the construction contractor and the University is submitted to arbitration and either party claims that the acts or omissions of the Subcontractor are involved in whole or in part, any controversy between the Subcontractor and the University arising out of or in connection therewith, shall be determined in the same arbitration proceeding which shall be conducted under the Construction Industry Rules of the American Arbitration Association. This agreement to arbitrate such controversies between the Subcontractor and University shall be specifically enforceable.

LIABILITY FOR INJURY TO PERSONS AND DAMAGE TO PROPERTY

The Subcontractor assumes the entire responsibility and liability for losses, expenses, damages, demands, and claims in connection with or arising out of any personal injury (including death), and/or damage or destruction or alleged damage to or destruction of property,

sustained, or alleged to have been sustained, in connection with or arising out of the performance of the work by the Subcontractor, its agents, servants, employees, subcontractors and consultants, save and except that the Subcontractor, its agents, servants, employees, subcontractors and consultants shall not be liable for the sole negligence of the University. The Subcontractor shall indemnify and hold harmless the University and the Government, their officers, agents, servants, and employees from any and all liability for such losses, expenses, damages, demands, and claims, and shall defend any suit or action brought against any or all of them based on any alleged personal injury or property damage, and shall pay any damages, costs and expenses, including attorney's fees, in connection with or resulting from such suit or action. This clause shall have no application to public liability for a nuclear incident as defined in the Atomic Energy Act of 1954, as amended, to the extent the Subcontractor is indemnified under said law.

NON-WAIVER OF DEFAULT (A-E)

Neither the rights of review, comment, or approval, conferred on the University, nor the University's exercise of those rights shall relieve the Subcontractor from any obligation imposed by law or this Subcontract, or shall constitute a waiver by the University of rights arising under this Subcontract or at law.

No payment, final or otherwise, shall operate to relieve the Subcontractor from any obligation arising under this Subcontract or at law, or shall constitute a waiver of claims by the University for errors or omissions, the Subcontractor's failure to comply with the requirements of the Subcontract, or arising from representations or undertakings by the Subcontractor under this Subcontract. All payments to the Subcontractor shall be contingent and subject to recalculation and recoupment in the event of termination for cause or in the event of later discovery of any defect or deficiency in the Subcontractor's performance hereunder.

In the event either the Subcontractor or University shall at any time or times waive any breach of this Subcontract by the other, such waiver shall not constitute a waiver of any other breach of this Subcontract, whether of the same or any other covenant, condition, right, event, term, or obligation.

LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS

Reference is made to the clause of these General Provisions entitled "Cost Accounting Standards" or "Disclosure and Consistency of Cost Accounting Practices." Notwithstanding the provisions of that clause, or of any other provision of this Subcontract, the Subcontractor shall be liable to the University for any increased costs, or interest thereon, resulting from any failure of the Subcontractor, with respect to activities carried on at the site of the work, or of a subcontractor, to comply with applicable cost accounting standards or to follow any practices disclosed pursuant to the requirements of such clause.

SUBCONTRACTOR LICENSING (LIMITED RIGHTS DATA AND RESTRICTED COMPUTER SOFTWARE)

(With the exception of a small business firm or nonprofit organization, this clause shall become automatically applicable if the Subcontractor should assert a proprietary claim in connection with any request for data under the Rights in Data - General clause or the Additional Data Requirements clause of these General Provisions.)

Except as may be otherwise specified in this Subcontract as technical data not subject to this paragraph, the Subcontractor agrees that upon written application by DOE, it will grant to the Government and responsible third parties, for purposes of practicing a subject of this Subcontract, a non-exclusive license in any limited rights data or

restricted computer software, on terms and conditions reasonable under the circumstances including appropriate provisions for confidentiality; provided, however, the Subcontractor shall not be obligated to license any such data if the Subcontractor demonstrates to the satisfaction of the DOE or designee that:

1. Such data or software are not essential to the manufacture or practice of hardware designed or fabricated, or processes developed, under this Subcontract ;
2. Such data or software, in the form of results obtained by their use, have a commercially competitive alternative available or readily introducible from one or more other sources;
3. Such data or software, in the form of results obtained by their use, are being supplied by the Subcontractor or its licensees in sufficient quantity and at reasonable prices to satisfy market needs, or the Subcontractor or its licensees have taken effective steps or within a reasonable time are expected to take effective steps to so supply such data in the form of results obtained by its use; or
4. Such data or software, in the form of results obtained by their use, can be furnished by another firm skilled in the art of manufacturing items or performing processes of the same general type and character necessary to achieve the Subcontract results.

ASSIGNMENTS

This subcontract may be assigned by the University to the U.S. Government or a successor-in-interest.

Except as to assignment of payment due hereunder, the Subcontractor shall have no right, power or authority to sell, mortgage, transfer or assign this Subcontract, any portion hereof, any interest herein or any claim hereunder, nor allow or permit any other party or parties to have any interest in or use any part of the rights or obligations granted hereunder for any purpose whatsoever without the prior written consent of the University.

SAFETY MANAGEMENT PLAN AND REPORTING

(Applicable to Subcontractors with ten or more employees working at University or Government-owned sites or facilities [herein called LBNL Site] except for work involving construction and contract labor when Subcontractor's employees receive specific task assignments from University employees.)

(a) Subcontractor shall, upon award of the Subcontract, submit a copy of Subcontractor's Safety Management Plan for University approval to LBNL's EH&S Field Support Department, MS 90-1140. Subcontract work may not begin at the LBNL site until approval of the plan has been given by the University's EH&S Field Support Department. The Safety Management Plan shall satisfy, as a minimum, the requirements for the Injury and Illness Prevention Program required by Cal-OSHA General Industry Safety Orders §3203. University approval of this plan shall be considered as meeting DOE requirements for Integrated Safety Management. University approval of the plan is for the purpose of verifying that the plan meets University requirements and is not an endorsement of the adequacy of the plan for protecting Subcontractor's employees from all occupational injuries and illness cases. Assuring the safety and health of Subcontractor's employees shall at all times remain the responsibility of the Subcontractor.

(b) Subcontractor shall report all injuries to Subcontractor's employees that qualify for inclusion on Subcontractor's Cal-OSHA log to the University within 10 days of occurrence of the injury. Subcontractor shall furnish a copy of its supplemental injury report form (OSHA form 101 or equivalent) for each such case. This report shall be mailed to the LBNL SAAR Office, Health Services, MS 26-109. In addition, serious injuries resulting in death or hospitalization shall be reported by telephone immediately to the LBNL Health Services Receptionist, (510) 486-6266.

(c) Subcontractor shall report to the University the hours worked by Subcontractor's employees on the LBNL Site on a quarterly basis. For each quarter, the hours worked shall be reported in writing no later than the 10th day of the month following the end of the quarter. This report shall be mailed to the LBNL SAAR Office, Health Services, MS 26-109.

ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

This Subcontract shall consist of the Subcontract Signature Page, any Special Provisions, these General Provisions, and any other referenced and incorporated clauses, provisions and documents, which is the entire agreement between the parties concerning the subject matter hereof and supersedes all prior proposals, representations, negotiations, or agreements, whether written or oral.

Any inconsistencies in the terms and conditions comprising the Subcontract shall be resolved by giving precedence in the following order: (a) the Subcontract document; (b) any Special Provisions; (c) these General Provisions; (d) the clauses listed in the provision of these General Provisions entitled *CLAUSES INCORPORATED BY REFERENCE*; (e) any specifications; (f) other documents listed in the special provision entitled INCORPORATED DOCUMENTS, if any, in the order in which they are listed; and (g) any other documents, exhibits, or attachments.

CLAUSES INCORPORATED BY REFERENCE

The FAR and DEAR clauses listed below, which are located in Chapters 1 and 9, respectively, of Title 48 of the Code of Federal Regulations, are incorporated by this reference as a part of the University's Subcontract as prescribed below. As used in the clauses, the term "contract" shall mean the Subcontract; the term "Contractor" shall mean the entity (hereinafter "Subcontractor") who entered into the Subcontract with the University; the term "subcontractor" shall mean the Subcontractor's subcontractor; and the terms "Government" and "Contracting Officer" shall mean the University, except in clauses FAR 52.215-2, 52.227-1, 52.227-1 Alternate I, 52.227-2, 52.227-14, and and DEAR 952.227-11 and 952.227-13, in which clauses "Government" shall mean the U. S. Government and "Contracting Officer" shall mean the DOE Contracting Officer for Prime Contract DE-AC02-05CH11231 with the University.

THE FOLLOWING CLAUSES APPLY TO ALL SUBCONTRACTS:

FAR 52.216-7	ALLOWABLE COST AND PAYMENT (MAR 2000), as modified by Alternate II of DEAR 952.216-7. If the Subcontract is with a state or local government, substitute "Subpart 31.6" for "Subpart 31.2" in paragraph (a).
FAR 52.222-26	EQUAL OPPORTUNITY (APR 2002) (Note: Download the EEO Poster at: http://www.dol.gov/esa/ ; select "Posters" then "Equal Employment Opportunity Act")
FAR 52.227-1	AUTHORIZATION AND CONSENT (JUL 1995)
FAR 52.227-14	RIGHTS IN DATA-GENERAL (JUN 1987), with Alternates I, & V. If delivery of limited right data is required, add Alternate II. If delivery of restricted computer software is required, add Alternate III.
FAR 52.227-23	RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987), if the awarded Subcontract is based upon a technical proposal, the full text of this clause will be included in the body of the Subcontract.

FAR 52.232-10 PAYMENTS UNDER FIXED PRICE ARCHITECT-ENGINEER CONTRACTS (AUG 1987)

FAR 52.236-22 DESIGN WITHIN FUNDING LIMITATIONS (APR 1984)

FAR 52.236-23 RESPONSIBILITY OF THE ARCHITECT-ENGINEER CONTRACTOR (APR 1984)

FAR 52.236-24 WORK OVERSIGHT IN ARCHITECT-ENGINEER CONTRACTS (APR 1984)

FAR 52.236-25 REQUIREMENTS FOR REGISTRATION OF DESIGNERS (APR 1984)

FAR 52.242-14 SUSPENSION OF WORK (APR 1984)

FAR 52.243-1 CHANGES (FIXED PRICE) (AUG 1987) with Alternate III.

FAR 52.244-4 SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS (AUG 1998)

FAR 52.249-7 TERMINATION (FIXED-PRICE ARCHITECT-ENGINEER) (APR 1984)

DEAR 952.227-9 REFUND OF ROYALTIES (FEB 1995), if "royalties" are paid by the Subcontractor or a subcontractor at any tier.

DEAR 952.236-71 INSPECTION IN ARCHITECT-ENGINEER CONTRACTS (APR 1994)

DEAR 970.5204-59 WHISTLEBLOWER PROTECTION OF SUBCONTRACTOR EMPLOYEES (APR 1999), if the work is performed on-site at a DOE-owned or leased facility.

DEAR 970.5223-2 AFFIRMATIVE PROCUREMENT PROGRAM (MAR 2003)

DEAR 970.5245-1 PROPERTY (DEC 2000)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$2,500:

FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JULY 2000)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT IS FOR \$10,000 OR MORE:

FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (6/98)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT IS FOR \$25,000 OR MORE:

FAR 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (12/01)

FAR 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (12/01)

DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2000), if the PO involves any of the hazardous activities stipulated in 10 CFR 707.2

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$100,000:

FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)

FAR 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995), excluding paragraph (c)(1)

FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JAN 1990)

FAR 52.219-8 UTILIZATION OF SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS CONCERNS (OCT 1995)

FAR 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)

FAR 52.229-3 FEDERAL, STATE AND LOCAL TAXES (JAN 1991)

FAR 52.247-63 PREFERENCE FOR U.S. FLAG AIR CARRIERS (JAN 1997), if the Subcontract involves international air transportation

DEAR 952.209-72 ORGANIZATIONAL CONFLICT OF INTEREST (JUNE 1997)

DEAR 970.5232-3 ACCOUNTS, RECORDS, AND INSPECTION (DEC 2000)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$500,000:

FAR 52.219-9 SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2000), unless the Subcontractor is a small business or there are no subcontracting possibilities.

FAR 52.230-2 COST ACCOUNTING STANDARDS (APR 1998), unless the Subcontractor certifies that it is eligible for & elects to use modified CAS-coverage

FAR 52.230-3 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (APR 1998), if the Subcontractor certifies that it is eligible for & elects to use modified CAS-coverage

FAR 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (NOV 1999)

FAR 15.406-2 CERTIFICATE OF CURRENT COST OR PRICING DATA, unless the Subcontract and all Modifications are exempt from the submission of certified cost or pricing data, per FAR 15.403.

DEAR 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)

DEAR 970.5204-77 WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993 (JUN 1997)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT INDICATES IT IS FOR RESEARCH, DEVELOPMENT, OR DEMONSTRATION (RD&D) WORK OR DESIGN WORK INVOLVING NON-STANDARD TYPES OF CONSTRUCTION:

FAR 52.227-1, w/Alt. I AUTHORIZATION AND CONSENT (JUL 1995), with Alternate I (APR 1984)

DEAR 952.227-11 PATENT RIGHTS - RETENTION BY THE CONTRACTOR (SHORT FORM) (FEB 1995), if the Subcontractor is a Domestic Small Business or Non-Profit Organization, as defined in FAR 27.301

DEAR 952.227-13 PATENT RIGHTS - ACQUISITION BY THE GOVERNMENT (SEP 1997), if the Subcontractor is not a Domestic Small Business or Non-Profit Organization, as defined in FAR 27.301

DEAR 952.227-84 RIGHT TO REQUEST PATENT WAIVER (FEB 1998)

END OF GENERAL PROVISIONS